

ORDER OF THE COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM VASQUEZ MARTINEZ,

Petitioner,

v.

MIKE MCDONALD, Warden,

Respondent.

No. C 08-5232 RMW (PR)

ORDER GRANTING AN EXTENSION OF
TIME TO FILE TRAVERSE; DENYING
MOTION TO STRIKE ANSWER; DENYING
REQUEST FOR COUNSEL; DENYING
REQUEST FOR EVIDENTIARY HEARING

/ (Docket Nos. 55, 58, 61, 62.)

Petitioner, a California state prisoner, filed a petition for a writ of habeas corpus. (Docket No. 1.) Respondent has filed an answer. (Docket No. 40). Petitioner has filed a request for an extension of time in which to file a traverse. Petitioner has also filed a motion to strike respondent's late answer, and filed requests for appointment of counsel and an evidentiary hearing.

Petitioner's petition was filed on November 19, 2008. (Docket No. 1.) On September 29, 2009, the court granted petitioner's motion for a stay to allow him to exhaust certain unexhausted claims in state court. (Docket No. 9.) On May 24, 2010, the court lifted the stay. (Docket No. 16.) On August 6, 2010, the court issued an order to respondent to show cause why the petition filed November 19, 2008, should not be granted. (Docket No. 18.) The court's order directed respondent to file an answer within sixty (60) days, or to file a motion to dismiss in lieu of an answer. (*Id.* at p.3.) After being granted four extensions of time, respondent filed a motion to dismiss petitioner's

petition in part. (Docket No. 29.) On November 17, 2011, the court granted respondent's motion to dismiss the petition in part. (Docket No. 38.) The court's order directed respondent to file an answer to the remaining claims in the petition within ninety (90) days. (Id. at 3.) Respondent filed an answer on February 15, 2012. (Docket No. 40). Respondent's answer was timely filed. Accordingly, petitioner's motion to strike respondent's late answer is **DENIED**. Good cause having been shown, petitioner's second request for an extension of time in which to file a traverse is **GRANTED**. Petitioner's traverse filed June 11, 2012, is deemed timely filed.

The Sixth Amendment's right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Unless an evidentiary hearing is required, the decision to appoint counsel is within the discretion of the district court. See Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). An evidentiary hearing does not appear necessary at this time, and there are no exceptional circumstances to warrant appointment of counsel. Accordingly, Petitioner's request for appointment of counsel and request for an evidentiary hearing are both **DENIED** without prejudice.

This order terminates docket nos. 55, 58, 61, and 62.

IT IS SO ORDERED.

DATED: ~~FEB 15~~ FEB 15 2012



RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM VASQUEZ MARTINEZ,
Plaintiff,

Case Number: CV08-05232 RMW

CERTIFICATE OF SERVICE

v.

MIKE MCDONALD et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 12, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

William Vasquez Martinez F00355
Pelican Bay State Prison
Housing D5-207
P.O. Box 7500
Crescent City, CA 95532

Dated: October 12, 2012

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk